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Cloture: Its Effects on Senate Floor Proceedings

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By invoking cloture, the Senate votes to impose a limit on how much longer the Senate will consider a question that is pending before it. That question may be a bill, resolution, amendment, motion, conference report, nomination, or other matter of legislative or executive business. Once cloture is invoked on a question, that question is to remain the business of the Senate until the Senate disposes of it. In the meantime, the Senate can consider other business only by unanimous consent.

While considering a question under cloture, the Senate follows procedures that differ from its normal floor procedures in several important ways. Most of the changes in procedure that are triggered by a vote to invoke cloture are specified in paragraph 2 of Senate Rule XXII. Several other important effects of cloture on the Senate's floor proceedings are matters of precedent, and are discussed in *Riddick's Senate Procedure*, pp. 282-334, on "Cloture Procedure."

Thirty Hour Cap on Further Consideration. The most important effect of invoking cloture is to impose a cap of 30 hours of additional time for the Senate to continue considering the question on which it invoked cloture. This is a 30-hour cap on *consideration*, not merely on debate. The time consumed by other proceedings, such as points of order, quorum calls and rollcall votes, counts against this 30-hour cap, as does all time consumed by debate. However, any time that the Senate spends on other business or in recess or adjournment does not count against the 30 hours. If and when all time under the 30-hour cap has expired, the Senate votes on the question on which it invoked cloture, without acting on any amendments that are not actually pending and any motions except motions to table and reconsider. A Senator also may demand a live quorum call before the Senate begins to vote on the question on which cloture was invoked.

Extending the Cap. Once each calendar day, the Senate can consider a nondebatable motion to extend the cap beyond 30 hours. Such a motion requires the support of the same majority that is needed to invoke cloture (except on a Senate rules change): three-fifths of the Senators duly chosen and sworn. Also, Rule XXII guarantees each Senator at least 10 minutes to speak if the 30-hour period has expired and a Senator has not used or yielded at least 10 minutes of his or her time for debate. In principle, therefore, the period for post-cloture consideration can extend somewhat beyond 30

hours. However, it has never been necessary to invoke either of these provisions of Rule XXII.

One Hour for Debate per Senator. Under cloture, each Senator is entitled to speak for no more than one hour, though not every Senator can consume an hour for *debate* within the cap of 30 hours on total post-cloture *consideration*. As noted above, Rule XXII guarantees each Senator at least 10 minutes to speak, even if the 30-hour period has expired. Furthermore, under some circumstances, a Senator can yield part or all of his or her hour to a colleague:

[A] Senator may yield all or part of his one hour to the majority or minority floor managers of the measure, motion, or matter or to the Majority or Minority Leader, but each Senator specified shall not have more than two hours so yielded to him and may in turn yield such time to other Senators.

Thus, each floor manager and each party leader may control as much as three hours: the Senator's own hour and two hours yielded by other Senators. In turn, any or all of these four Senators can yield their time to other Senators. In theory, therefore, a single Senator could control as much as 13 hours for debate: the Senator's own hour and twelve hours yielded by the four party leaders and floor managers. Such an eventuality is very unlikely in practice.

Amendments To Be Submitted in Advance. Rule XXII provides that, to be eligible for consideration under cloture, an amendment must have been submitted in writing before the Senate invokes cloture and while the Senate is in session. First-degree amendments must be presented by 1:00 p.m. on the day after the cloture motion is filed; second-degree amendments must be submitted at least one hour before the cloture vote begins. An amendment need not be read if it has been printed and available for 24 hours.

Amendments To Be Germane. Also under Rule XXII, no amendment is in order under cloture if it is not germane to the matter on which cloture has been invoked. This requirement applies to any amendment that has been offered but on which the Senate has not yet voted at the time it votes to invoke cloture.

Authority of the Presiding Officer. The Senate's precedents give its presiding officer authority under cloture that he or she does not normally enjoy.

- ! First, under cloture, the presiding officer may count to determine whether a quorum is present. This authority prevents any Senator from triggering a quorum call simply by suggesting the absence of a quorum.
- ! Second, under cloture, the presiding officer may take the initiative to rule certain actions and matters out of order without a Senator first making a point of order from the floor. Thus, immediately after the Senate invokes cloture, the presiding officer may state that a certain pending amendment is not germane and no longer may be considered.
- ! Third, under cloture, the presiding officer may enforce, at his own initiative, the provision of Rule XXII stating that no dilatory motion or amendment is in order under cloture. Presiding officers have held quorum

calls and even points of order and appeals to be dilatory, in addition to motions and amendments. However, Presiding officers have exercised this authority very infrequently and only in extraordinary situations.